

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

LEEROY QUIROS, WILBERT NEALS
and ROBERT C. LAVERY,

Plaintiffs

CIVIL ACTION NO. 3:CV-11-1175

v.

DOMINICK DeROSE, Warden; DEPUTY
NICHOLS; DEPUTY CARROLL; PRIME
CARE MEDICAL CO., INC. and ANY AND
ALL DAUPHIN COUNTY PRISON STAFF
INVOLVED IN THE ACTS OF
DEPRIVING INMATES OF SLEEP & REST,

Defendants.

(JUDGE KOSIK)

FILED
SCRANTON

NOV - 8 2011

Per M. G. P.
DEPUTY CLERK

MEMORANDUM AND ORDER

AND NOW, this 8th day of November, 2011, IT APPEARING TO THE
COURT THAT:

- (1) Plaintiffs, Leeroy Quiros, Wilbert Neals and Robert C. Lavery, prisoners confined at the Dauphin County Prison, filed the instant civil rights action pursuant to 42 U.S.C. §1983 on June 21, 2011;
- (2) In the complaint, Plaintiffs claim that they are being deprived of adequate sleep because of the prison's schedule;
- (3) The action was assigned to Magistrate Judge Malachy E. Mannion for Report and Recommendation;
- (4) On July 28, 2011, the Magistrate Judge issued a Report and Recommendation (Doc. 28) wherein he recommended that the complaint be dismissed for failure to exhaust administrative remedies prior to bringing the action;
- (5) Specifically, the Magistrate Judge found that the Plaintiffs have admitted in the complaint that they have failed to complete the grievance process;

(6) Plaintiffs have sought and have been granted several extensions of time (Docs. 29-34) to file objections to the Magistrate Judge's Report and Recommendation;

AND, IT FURTHER APPEARING THAT:

(7) Plaintiffs acknowledge in their objection filed on November 4, 2011 (Doc. 35) that the exhaustion process "has now been refiled.";

(8) We have considered the Magistrate Judge's Report and we concur with his recommendation. After reviewing the record, we find that Plaintiffs admit that exhaustion of administrative remedies is currently being attempted. We agree with the Magistrate Judge that the Plaintiffs have failed to exhaust administrative remedies and that the complaint should be dismissed.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

- (1) The Report and Recommendation of Magistrate Judge Malachy E. Mannion dated July 28, 2011 (Doc. 28) is **ADOPTED**;
- (2) The Plaintiffs' complaint is **DISMISSED**; and
- (3) The Clerk of Court is directed to **CLOSE** this case and to forward a copy of this Memorandum and Order to the Magistrate Judge.



Edwin M. Kosik
United States District Judge